REMARKS

This communication is in response to the Office Action mailed April 25, 2006. Claims 1-29 and 31-63 were pending in the application. Of these claims, claims 1, 2, 5, 11, 15, 20, 27, 28, and 29 are currently amended and claim 7 has been canceled. The above-noted newly amended claims are respectfully submitted in order to more appropriately claim the subject matter which Applicants consider to constitute one aspect of their inventive contribution. No new matter is included in these amendments.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. For the reasons discussed herein, Applicants respectfully traverse the Examiner's rejections, and request the Examiner to reconsider patentability of the pending claims based on the amendments and arguments herein.

Objection under 35 U.S.C. § 112

In response to the Examiner's objection, the term "preferably" in claim 2 has been deleted.

Rejection under 35 U.S.C. § 103

The Examiner rejected claims 1-5, 7-20, 22-28, 31-49 and 52-63 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Dias* (US 6,540,791).

The Examiner stated that *Dias* teaches a method for preparing a hair bleaching composition comprising an oxidizing agent (such as hydrogen peroxide, persulfates and bromates as claimed in claims 1, 4, 7, 15 and 18-19 of the present application) and metal sequestering agents (such as iminodisuccinic acid as claimed in claims 1-3, 5, 7 15—17, and 20). (*See* 4/25/06 Office Action, at 2-3.) The Examiner further stated that *Dias* also teaches methods for bleaching and/or coloring hair and kits as claimed in the present application.

(*Id.*) Applicants respectfully submit that this rejection is now moot in view of the amendments herein.

To establish a *prima facie* case of obviousness under Section 103, the reference(s) relied upon for rejection must suggest the entirety of the claimed invention and, hence, "the prior art reference (or references when combined) must teach or suggest ***all*** the claim limitations." *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991) (emphasis added).

Dias does not teach or suggest all of the claim limitations of the present invention because it fails to teach or suggest an oxidizing composition having a polyhydroxycarboxylic acid having the general formula (I) recited in all of the pending claims of the instant application, as they are amended. As mentioned above, the claims of the present application have been amended to remove any reference to iminodisuccinic acid as a metal sequestering agent. For example, claim 5 of the present invention now recites that the metal sequestering agents useful in accordance with the present invention are methylglycinediacetic acid, N-lauroyl-N,N',N'-etylenediamiaminetriacetic acid, N,-N-dicarboxymethyl-L-glutamic acid, and a corresponding salt thereof. None of these hydroxycarboxylic acids are mentioned in *Dias*. In fact, the Examiner admitted that *Dias* fails to teach "methylglycinediacetic acid." (*See* 4/25/06 Office Action, at 4.)

Therefore, the claimed inventions would not have been obvious to one of ordinary skill in the art since *Dias* does not teach the desirability of having these specific compounds in a hair oxidizing composition. *In re Fritch,* 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992) ("The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.")

The Examiner also rejected claims 6 and 21 under 35 U.S.C. § 103(a) as being unpatentable over *Dias* in view of *Huglin et al.* (WO 00/25730). First, as the Examiner has correctly pointed out in the Office Action, *Dias* does not teach an oxidizing composition having methylglycinediacetic acid as recited in claims 6 and 21 of the instant application. In an effort to remedy the deficiencies of *Dias*, the Examiner combines *Dias* with *Hughlin et al.* The Examiner stated that "*Huglin et al.*, in analogous art of hair bleaching formation, teaches a composition comprising methylglycindiacetic acid . . . (*see* page 14, formula 72.)" (4/25/06 Office Action, at 4.) However, applicants respectfully disagree with the Examiner's conclusion.

To establish a *prima facie* case of obviousness under § 103, the references relied upon for rejection must include a teaching, suggestion or motivation to combine the reference as suggested and a reasonable expectation of success. *In re Raynes*, 28 USPQ2d 1630 (Fed. Cir. 1993).

Huglin et al. is generally directed to light stabilizing compounds useful for body care and household products. Methylglycinediacetic acid is merely mentioned, amongst a laundry list of other specific compounds, which may be added to the body care and household products along with the light stabilizer. There is no teaching, suggestion or motivation of any kind in *Huglin et al.* to select methyl glycinediacetic acid in combination with an oxidizing agent, such as hydrogen peroxide, as recited in claims 6 and 21 of the present application.

Moreover, it is impermissible to use hindsight reconstruction "to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine*, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988). "'Common knowledge and common sense'. . . do not substitute" for evidence of a "specific hint or suggestion" to combine prior art. *In re Lee*, 277 F.3d

1338, 1344-45, 61 USPQ2d 1430 (Fed. Cir. 2002); *see also In re Dembiczak*, 175 F.3d 994, 997, 1000, 50 USPQ2d 1614 (Fed. Cir. 1999) (trash bag having a Halloween pumpkin design is not *prima facie* obvious in the absence of evidence of suggestion to combine normal trash bag with references describing pumpkin designs on paper bag). Moreover, a combination "could have been made" is not sufficient to support a finding of obviousness. *KSR Intern. Co. v. Teleflex, Inc., Teleflex, Inc. v. KSR Intern. Co.*, 119 Fed. Appx. 282 (Fed. Cir. 2005), *cert. granted sub nom, KSR Intern. Co. v. Teleflex, Inc.*, No. 04-1350 (2006) (appeal pending before the U.S. Supreme Court).

Without the improper hindsight reconstruction, one of ordinary skill in the art would not be motivated to combine *Dias* and *Huglin et al.* to arrive at the present invention having an oxidizing composition comprising an oxidizing agent and a methyl glycinediacetic acid as a metal sequestering agent for dyeing, bleaching or permanently reshaping hair. Accordingly, Applicants respectfully submit that claims 6 and 21 are not obvious in view of *Dias* and *Huglin et al.*

Lastly, the Examiner rejected claims 29 and 50-51 under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Dias* in view of *Di La Mettrie et al.* (US 6,254,646). The Examiner correctly pointed out, in the Office Action, that *Dias* does not teach a composition for permanently reshaping hair or a process for permanently reshaping hair. Then the Examiner stated that *Di La Mettrie et al.* teaches "a process for reshaping hair comprising the step of applying to the hair a reducing composition followed by applying an oxidizing composition." (4/25/06 Office Action, at 4-5.)

However, even if *Dias*, the primary reference, is combined with the secondary reference, *Di La Mettrie et al.*, it fails to teach the inventions recited in claims 29 and 50-51 since both of these two references do not mention the specific

polyhydroxycarboxylic acids of formula (I) required by the claims of the instant application.

As mentioned above, *Dias* does not disclose the specific hydroxycarboxylic acids having the general formula (I). Similarly, *Di La Mettrie et al.* also fails to disclose the specific hydroxycarboxylic acids having the general formula (I). Therefore, the combination of *Dias* and *Di La Mettrie et al.* fails to teach the essential element of the present invention, and therefore the *prima facie* case of obviousness has not been established.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 17, 2006

Respectfully submitted,

By _____

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